Process—Service on Non-Resident Attorney.—In Kutner *v.* Hodnett, in the New York Supreme Court, Special Term (April, 1908, 59 Misc. 21), it was held that "a non-resident, who voluntarily and in pursuance of his business as an attorney at law comes into this state to conduct litigation on behalf of a client, is not exempt from service of a summons." In denying a motion to set aside service of a summons upon an attorney, Mr. Hendrick said:

"I find no case in which it is held that the immunity from service of a summons enjoyed by a non-resident party or witness while in this state in attendance on a litigation in which he is such a party or witness extends to an attorney at law of another state who voluntarily and in pursuance of his business as such attorney comes into this state to conduct a litigation on behalf of a client. The only non-residents who appear to be exempt from service while attending court in this state are necessary or interested parties, suitors, witnesses or creditors in bankruptcy. The reason for the exemption of such persons, viz., the promotion of the due and efficient administration of justice, fails when it is sought to be applied to foreign attorneys at law, and to extend the rule to them would enable foreign attorneys to practice law constantly in this state, at the same time, extend to them immunity from the process of the courts of this state."

This language would seem to convey a sound view. The decision has been recently cited with approval by the Supreme Court of Arkansas in Paul *v.* Stuckey (189 S. W. 676, L. R. A. 1917 B, 888). There a still stricter privilege on the part of an attorney was claimed, that is, that he was exempt from service of civil process while attending court in a professional capacity in a county other than that of his residence. Nevertheless, the real reason for the rule, if one existed, might be much the same for the exemption of attorneys in counties as well as states other than those of residence. There might, for example, be more practical ground for exempting an attorney residing in New York City who went to Buffalo to try a case than for extending immunity to a New York City attorney who went to Jersey City or Newark on professional business.

The opinion of the Arkansas court is very elaborate and, after a review of the historical reasons for the privilege of attorneys, suitors or witnesses from civil or criminal process while attending court in another jurisdiction, satisfactorily shows that there is no substantial ground at present on the score of public policy for exempting an attorney from the service of merely civil process. There is an instructive note to this Arkansas decision in L. R. A., 1917 B (p. 893) which recognizes the practical distinction between the service merely of a summons and the service of a capias which may necessitate the giving of bail. The annotator has gathered two groups of cases, one involving attempts to serve an attorney when he is in a county other than that of his residence, and the other referring to service upon

an attorney in another state. It is shown that the authorities under both of these situations are in conflict.

The note in Lawyers' Reports Annotated calls attention to a very sensible decision in Parker Sav. Bank. *v.* McCandlas (6 Pa. Co. Ct. 327), in which it was remarked:

"We have several attorneys who are residents of adjoining counties but whose business is that of practicing attorneys of the Allegheny County Bar. Many Philadelphia lawyers reside in the adjoining counties. Certainly the cause of justice is not to be promoted by requiring the attorneys so doing business shall be exempt from service of process in the county in which their business is transacted. We see no sufficient reason for extending to attorneys of our courts who reside out of the county privileges beyond those given to practicing attorneys within the county."

The same note cites another Pennsylvania decision (Coleman *v.* Tim, 18 P. N. C., Pa., 240), in which "a member of the Philadelphia Bar who, for some years, had resided in New York, but who, according to some of the evidence, continued to practice in Philadelphia, was held not exempt from the service of summons while in Philadelphia for the purpose of attending court, it being stated that he was still a member of the Philadelphia Bar, and to some extent in practice there, and must take this privilege *cum onere*."

The annotator refers as follows to a federal court decision: "In Robbins *v.* Lincoln (1886, 27 Fed. 342), an Illinois statute providing that all attorneys should be liable to be arrested and held to bail, and be subject to the same legal process as other persons, but that attorneys should be privileged from arrest while they were attending court and while going to and returning from court, was construed to create a privilege only from being arrested and held to bail, and not to create a privilege from service of process not involving imprisonment or holding to bail; and it was held that an Illinois attorney might be served with summons while in attendance upon a federal court in Illinois, and that an attorney from another state, attending one of the United States courts in Illinois, had no greater privilege, and might be served with a summons in a civil action."

It is true there are several decisions cited in the note which are in conflict with those above referred to, but it is believed that the decision of the Supreme Court of Arkansas in Paul *v.* Stuckey (supra) and of Mr. Justice Hendrick in Kutner *v.* Hodnett embody a reasonably progressive judicial policy.

Railroads—Injury to Persons on or near Tracks—Articles Thrown from Trains.—In the leading case of Fletcher *v.* Baltimore & P. R. R. (168 U. S. 135) it appeared that "the railroad company had been in the daily habit for several years of running out of Washington